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Human resources management

Amendments to the Staff Regulations

Report of the Advisory Committee on Administrative and Budgetary Questions

1. The Advisory Committee on Administrative and Budgetary Questions has considered the report of the Secretary-General on amendments to the Staff Regulations (A/63/694). During its consideration of the report, the Committee met with representatives of the Secretary-General, who provided additional information and clarification. The Committee also met with representatives of the United Nations Staff Union in New York, at their request.

2. On 24 December 2008, the General Assembly adopted resolution 63/250, on human resources management, by which, inter alia, it approved new contractual arrangements comprising three types of appointment (temporary, fixed-term and continuing) under one set of Staff Rules. The report of the Secretary-General, which was submitted pursuant to section II, paragraph 12, of the resolution, contains the proposed amendments to the Staff Regulations that would be required to implement the streamlined system of contracts.

3. As indicated in paragraph 2 of the report of the Secretary-General, following review by the General Assembly and its decision on the proposed amendments to the Staff Regulations, the Secretary-General would prepare and provisionally promulgate the new set of Staff Rules effective 1 July 2009. The full text of the provisional new Staff Rules would be presented to the Assembly for its consideration during the main part of its sixty-fourth session. **The Advisory Committee believes that the report of the Secretary-General would have benefited from the inclusion of a more detailed introduction to the context of the proposed amendments and to the drafting and approval process, as well as an overview of the transitional arrangements referred to in paragraph 9 below and any additional steps that may be required in the future. Furthermore, the Secretary-General should have provided a more detailed commentary on the amendments, including, where appropriate, the legislative basis for the existing wording and/or the justification for the proposed changes.**

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4. The Advisory Committee was informed that the proposed amendments also reflected the decisions of the General Assembly on the implementation of the new internal system of justice, as contained in Assembly resolution 63/253, on administration of justice, as well as previous decisions of the Assembly on conditions of service that had already been implemented by means of the Staff Rules and relevant internal administrative issuances. Those decisions related, inter alia, to the introduction of paternity leave (regulation 6.2) and the modification of the eligibility requirements for an education grant (regulation 3.2), as approved by the Assembly in its resolutions 59/268 and 61/239, respectively. In addition, some amendments, such as replacement of the word "personnel" with the term "human resources" in the "scope and purpose" clause, as well as in regulations 8.1 and 8.2, were designed to harmonize the terminology employed in the Staff Regulations with that currently in use at the United Nations.

5. The Advisory Committee was also informed that the amended Staff Regulations had been prepared in consultation with the funds and programmes that are governed by the United Nations Staff Regulations and Rules, namely, the United Nations Children's Fund, the United Nations Development Programme, the United Nations Population Fund, the Office of the United Nations High Commissioner for Refugees and the United Nations Office for Project Services, and that those entities had concurred with the proposed text. The amendments had also been the subject of a legal review conducted by the Office of Legal Affairs.

6. The Advisory Committee was further informed that staff representatives had been consulted on the proposed amendments. However, the report of the Secretary-General does not contain any information on that consultative process. **The Advisory Committee is of the view that the Secretary-General should have included in his report an account of the staff-management consultative process and its outcomes. In this connection, the Committee recalls the provisions of section I, paragraph 4, of General Assembly resolution 63/250, pursuant to which the Secretary-General was requested to take advantage of the existing mechanisms for conflict resolution and mediation as deemed useful and appropriate in order to facilitate renewed dialogue between staff and management.**

7. The Advisory Committee was informed that the adoption of General Assembly resolution 63/250 created an opportunity for a significant review of the Staff Regulations. The proposed amendments responded, in particular, to section II, paragraph 12, of the resolution, pursuant to which the Secretary-General was requested to submit to the Assembly for consideration at the first part of its resumed sixty-third session draft regulations by which the streamlined system of contracts could be implemented. The Committee further notes, however, that some other significant issues covered by the resolution, for instance accountability (sect. V) and the performance appraisal system (sect. VI), are not reflected in the proposed amendments. **Clarification regarding the other instruments that will be used to address the outstanding issues should be provided to the Assembly during its consideration of the proposed amendments to the Staff Regulations. In this regard, the Committee emphasizes that the Staff Rules and related administrative issuances derived from the Staff Regulations should comply with the provisions of relevant Assembly resolutions.**

8. The proposed amendment to regulation 4.4 would continue to allow the Secretary-General to limit the eligibility to apply for vacant posts to internal candidates, as defined by him. Upon enquiry, the Advisory Committee was informed that this amendment was designed to align the existing regime with the new contractual arrangements and that the purpose of the provision was to promote the retention of qualified staff and increase the transparency of the recruitment process by ensuring that standards were applied rigorously and consistently across the Organization, including in the field. It is the understanding of the Committee that, under the new contractual arrangements, a far greater number of staff members, particularly those serving in the field, would be regarded as internal candidates, although individuals holding temporary appointments or fixed-term appointments limited to a specific office or department would continue to be regarded as external candidates. **The Advisory Committee is supportive of measures designed to retain individuals who meet the requirements of Article 101 (3) of the Charter of the United Nations and to ensure that all candidates who are eligible for vacant posts, including external candidates, receive equitable treatment. The General Assembly may wish to give further consideration to the impact of the proposed amendment to regulation 4.4 on the influx of new talent to the Organization, efforts to rejuvenate the Secretariat and the number of posts currently subject to the system of desirable geographic ranges.**

9. As indicated by the Secretary-General in his report, the proposed amendments to regulation 4.5 reflect the decision of the General Assembly, as contained in its resolution 63/250, concerning the implementation of the new contractual arrangements and the consequent introduction of three types of appointments, namely, temporary, fixed-term and continuing. The Advisory Committee notes that approval by the Assembly of the new contractual regime will result in the discontinuation of the award of permanent, probationary and indefinite appointments to new staff members who join the Organization on or after 1 July 2009. With regard to current staff members holding those types of appointment, the Committee was informed, upon enquiry, that their acquired rights were covered by existing regulation 12.1. The Committee was also informed that the Secretary-General would include in the Staff Rules a new chapter XIII, entitled "Transitional measures", to address issues relating to staff holding permanent, probationary and indefinite appointments, as well as other transitional measures. The Secretary-General also intended to issue internal bulletins designed, inter alia, to facilitate staff understanding of the implementation of those measures. As indicated in paragraph 3 above, it is anticipated that the full text of the new Staff Rules, including the aforementioned chapter XIII, will be submitted to the Assembly for its consideration during the main part of its sixty-fourth session.

10. In section II, paragraph 3, of its resolution 63/250, the General Assembly requested the Secretary-General not to appoint any staff to continuing contracts before 1 January 2010 pending consideration by the Assembly of the additional information concerning the implementation of those contracts. The Advisory Committee requested, but did not receive, information on the arrangements to be made for current staff members who, once the streamlined system of contracts enters into force on 1 July 2009, are found to meet the requirements for conversion to continuing appointments but whose existing contracts expire before 1 January 2010. **That information should be provided to the General Assembly for its consideration of the proposed amendments to the Staff Regulations.**

11. In section II, paragraph 23, of its resolution 63/250, the General Assembly reaffirmed that, while continuing appointments were not implemented, successful candidates from national competitive recruitment examinations and staff from language services after two years of probationary service would continue to be granted open-ended appointments according to the current practice. According to the current practice, those categories of staff are awarded permanent contracts upon successful completion of a two-year probationary period. **The Advisory Committee trusts that the transitional arrangements referred to in paragraph 9 above will clarify how the new contractual regime will apply to successful candidates from national competitive recruitment examinations and staff from language services.**

12. Pursuant to section II, paragraph 21, of its resolution 63/250, the General Assembly decided that there should be no expectations, legal or otherwise, of renewal or conversion of a fixed-term contract, irrespective of the length of service. The Advisory Committee notes that that decision has been accurately reflected in the proposed amendment to regulation 4.5 of the Staff Regulations, as well as in annex II thereto. However, the Secretary-General is also proposing the addition to regulation 4.5 of a new subparagraph (b), which would read as follows:

> "(b) A temporary appointment does not carry any expectancy, legal or otherwise, of renewal. A temporary appointment shall not be converted to any other type of appointment."

In accordance with annex II to the amended Regulations, a corresponding provision would also be included in relevant letters of appointment.

13. **The Advisory Committee points out that temporary appointments are, by their very nature, limited in duration and that, while they cannot be converted to any other type of appointment, there is nothing to prevent a holder of a temporary appointment from applying for other positions within the Organization and participating in a competitive selection process. The Committee believes that relevant letters of appointment should make reference to this opportunity.**

14. The majority of the Secretary-General's proposed amendments relate to article IX of the Staff Regulations, which deals with separation from service. The Advisory Committee notes that the article has been completely restructured; in his report, the Secretary-General stated that the proposed changes reflected the reorganization of the article into a more logical sequence, namely, resignation, retirement and finally termination.

15. The Secretary-General is also proposing the incorporation into new regulation 9.3 (existing regulation 9.1)[1] of a new subparagraph (b), to read as follows:

> "(b) In addition, in the case of a staff member holding a continuing appointment, the Secretary-General may terminate the appointment without the consent of the staff member if, in the opinion of the Secretary-General, such

[1] The Advisory Committee notes that, in section II, paragraph 4 (h), of General Assembly resolution 63/250, the Assembly refers to the potential ramifications of the proposed amendment to staff regulation 9.1. For the purpose of clarity, the Committee points out that, in the amended version of the Staff Regulations, existing regulation 9.1 becomes new regulation 9.3.

action would be in the interest of the good administration of the Organization and in accordance with the standards of the Charter."

Upon enquiry, the Advisory Committee was provided with the justification for the use of the phrase "in the interest of the good administration of the Organization", which has figured in article IX of the Staff Regulations since its adoption by the General Assembly in resolution 782 (VIII) of 9 December 1953. In section II, paragraph 22, of its resolution 63/250, the General Assembly provides some clarification as to its understanding of that phrase, deciding that it was to be interpreted principally as a change or termination of a mandate. **In the view of the Committee, the decision of the Assembly, as set out in section II, paragraph 22, of its resolution 63/250, should be reflected in new regulation 9.3.**

16. The Advisory Committee also points out, however, that, under the current Staff Regulations, termination in the interest of the good administration of the Organization is permitted only if the action is not contested by the staff member concerned (see existing regulation 9.1 (a)). If the proposed amendments to the Staff Regulations are adopted, terminations of staff members holding continuing appointments in the interest of the good administration of the Organization could occur without the consent of the staff member concerned. This represents a change to the current Staff Regulations. **Clarification of the basis for this proposed change should be provided to the General Assembly for its consideration of the proposed amendments to the Staff Regulations.**

17. **In conclusion, bearing in mind its observations, as set out in the preceding paragraphs, the Advisory Committee is of the view that it is for the General Assembly to decide whether the amendments to the Staff Regulations proposed by the Secretary-General accurately reflect the provisions of General Assembly resolution 63/250 and other relevant resolutions.**